

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ET AL., )

Plaintiffs, )

v. )

Case No. 05-CV-329-GKF-PJC

TYSON FOODS, INC., et al., )

Defendants. )

ORDER

Pending before the Court is Non-Party Al Saunders' Motion to Quash Subpoena [Dkt. No. 2640]. The motion is **DENIED** with the caveat noted below.


The State of Oklahoma has subpoenaed Saunders to testify at trial of this case which started on September 24, 2009. Saunders is a non-party poultry grower located in Colcord, Oklahoma, about 1½ hours from Tulsa. Saunders seeks to quash the subpoena on grounds of undue burden. Essentially, Saunders argues that he has accepted a placement of newly hatched fowl which require his nearly-constant attention. Saunders contends that requiring him to testify during this critical growing period would risk harm to the fowl, threaten Saunders' livelihood and violate his obligations as a bailee. Saunders asks that the subpoena be quashed or modified to require his testimony between November 6-20, 2009.

This motion was discussed at the September 25, 2009, hearing and the Court understood that the matter was largely resolved. The State indicated that it believed "we might be able to accommodate if he can be available the 6<sup>th</sup> through the 20<sup>th</sup>."

(Transcript of Sept. 25, 2009 hearing, Dkt. No. 2673, p.9, lines 9-10). In its Response to the Motion to Quash the State again reiterated that “it will use its best efforts to schedule Sanders’ testimony between November 6 and 20, 2009,” but further noted that “it may not be able to do so in light of the Court’s trial schedule.” (Dkt. No. 2690, p. 3, n.1).

Saunders has not demonstrated sufficient burden to justify quashing this subpoena entirely. The State must be able to prosecute its case and must be able to call witnesses as required. Saunders has been given notice of his scheduled testimony and the State has indicated it will make its best efforts to accommodate his schedule. Accordingly, the Motion to Quash the subpoena is **DENIED**; however, it is the understanding of the Court, based upon representations of counsel, that the State will make every reasonable effort to schedule Saunders’ testimony between Nov. 6-20, 2009, if possible. State should remain in contact with Saunders’ attorney and provide Saunders adequate time to make arrangements for someone to oversee his poultry growing operations if necessary.

IT IS SO ORDERED this 15<sup>th</sup> day of October 2009.



---

Paul J. Cleary  
United States Magistrate Judge